



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2010

Mr. David Daugherty
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2010-14152

Dear Mr. Daugherty:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393776.

The Harris County Sheriff's Office (the "sheriff") received a request for specified 9-1-1 calls. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, 552.132, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See* Open Records Decision No. 680 at 5 (2004); *see also* Fam. Code § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”); 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). We note, however, that section 58.007(c) is applicable to information that relates to a juvenile as a suspect or offender, and not as a complainant, victim, witness, or other involved party. *See id.* § 58.007(c). You assert the submitted information is a juvenile law enforcement record subject to section 58.007 of the Family Code. However, upon review, we find this information does not identify a juvenile as a suspect or offender. Therefore, we conclude you have failed to establish section 58.007(c) of the Family Code is applicable to the submitted information, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and submit an affidavit attesting, the submitted information relates to a pending criminal investigation. Based upon this representation, we conclude that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we conclude that section 552.108(a)(1) of the Government Code is generally applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See *Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of basic information, the sheriff may withhold the submitted information from disclosure under section 552.108(a)(1).¹

You claim the identity of the complainant is protected by the common-law informer's privilege, which is also encompassed by section 552.101 of the Government Code. The common-law informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). This privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978).

The submitted information reflects that the complainant reported alleged violations of the Penal Code to the sheriff. You do not indicate, nor does it appear, the subjects of the complaint know the identity of the complainant. Thus, based on your representations and our review, we conclude that in releasing basic information, the sheriff may withhold the complainant's identifying information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, with the exception of basic information, the sheriff may withhold the submitted information from disclosure under section 552.108(a)(1) of the Government Code. In releasing basic information, the sheriff may withhold the complainant's identifying information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

¹As our ruling is dispositive, we need not address your remaining claims against disclosure of this information.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Luttrall", written over the printed name.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 393776

Enc. Submitted documents

c: Requestor
(w/o enclosures)